



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-038, C-570-039]

Certain Amorphous Silica Fabric Between 70 and 90 Percent Silica, from the People's Republic of China: Initiation of Circumvention Inquiry of Antidumping and Countervailing Duty Orders – 70-90 Percent Amorphous Silica Fabric

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to allegations of circumvention from Auburn Manufacturing, Inc. (AMI), the Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of certain amorphous silica fabric with 70-90 percent silica content (70-90 percent ASF) from the People's Republic of China (China) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain amorphous silica fabric with a silica content of at least 90 percent from China.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Margaret Collins, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6250.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 2021, Auburn Manufacturing, Inc. (AMI), the petitioner in the AD and CVD investigations, requested that Commerce initiate circumvention inquiries with regard to 70-90 percent ASF that is exported to the United States from China.¹ The petitioner alleges that 70-

¹ See Petitioner's Letter, "Certain Amorphous Silica Fabric from the People's Republic of China: Request for Anti-Circumvention Inquiry," dated August 20, 2021.

90 percent ASF constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders*,² pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(i). In addition, the petitioner alleges that 70-90 percent ASF is later-developed merchandise and should be included within the scope of the *Orders*, pursuant to section 781(d) of the Act and 19 CFR 351.225(j). No interested parties submitted comments in response to this request for an inquiry.

Scope of the *Orders*

The product subject to these *Orders* is amorphous silica fabric with silica content of at least 90 percent from China. For a complete description of the scope of the *Orders*, see the Initiation Decision Memorandum dated concurrently with this notice.³

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers amorphous silica fabric with silica content between 70 and 90 percent produced in China and exported to the United States.

Legal Framework

Section 781(c) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as merchandise has been “altered in form or appearance in minor respects... whether or not included in the same tariff classification.”

Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.”

While the Act is silent regarding the factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In

² See *Certain Amorphous Silica Fabric from the People’s Republic of China: Antidumping Duty Order*, 82 FR 14314 (March 17, 2017); see also *Certain Amorphous Silica Fabric from the Peoples’ Republic of China: Countervailing Duty Order*, 82 FR 14316 (March 27, 2017) (*Orders*).

³ See Memorandum, “Decision Memorandum for Initiation of Anti-Circumvention Inquiry,” dated concurrently with and hereby adopted by this notice (Initiation Decision Memorandum).

conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.”⁴ Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and, (5) cost of any modification relative to the value of the imported products.⁵

Section 781(d) of the Act provides that Commerce may initiate an circumvention inquiry to determine whether merchandise developed after an AD or CVD investigation is within the scope of the order(s). In conducting later-developed merchandise inquiries under section 781(d)(1) of the Act, Commerce will evaluate whether: (1) the general physical characteristics of the merchandise subject to the inquiry are the same as subject merchandise covered by the order(s); (2) the expectations of the ultimate purchasers of the merchandise subject to the inquiry are no different to the expectations of the ultimate purchasers of subject merchandise; (3) the ultimate use of the inquiry merchandise and subject merchandise are the same; (4) the channels of trade of both products are the same; and, (5) there are any differences in the advertisement and display of both products.⁶ First, however, Commerce applies a commercial availability test to determine whether the merchandise subject to the inquiry was commercially available at the time of the investigation(s) (*i.e.*, the product was present in the commercial market or the product was tested and ready for commercial production).⁷

⁴ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

⁵ *Id.*; see also *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016).

⁶ See section 781(d)(1) of the Act.

⁷ See *Later-Developed Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order*, 71 FR 32033, 32035 (June 2, 2006), unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006).

Analysis

After analyzing the record evidence and the petitioner's allegation, we determine that there is sufficient information to warrant the initiation of a minor alterations circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i). However, we determine that initiation of a later-developed merchandise circumvention inquiry, pursuant to section 781(d) of the Act and 19 CFR 351.225(j), is not warranted. For a full discussion of the basis for our decision to initiate a minor alterations circumvention inquiry, but not a later-developed merchandise circumvention inquiry, *see* the Initiation Decision Memorandum. The Initiation Decision Memorandum is a public document, on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Initiation Decision Memorandum can be accessed directly at <http://access.trade.gov/public/FRNoticesListLayout.aspx>.

Conclusion

Commerce will determine whether the merchandise subject to the inquiry (as described in the "Merchandise Subject to the Anti-Circumvention Inquiry" section above) is circumventing the *Orders* such that it should be included within the scope of the *Orders*, pursuant to section 781(c) of the Act and 19 CFR 351.225(i).

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue entered or withdrawn from warehouse for consumption on or after the date of publication in the *Federal Register* of the initiation of the inquiry.

Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. In accordance with section 781(f) of the Act, to the maximum extent practicable, Commerce intends to issue its final determination within 300 days of the date of

publication of this initiation.

Notification to Interested Parties

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: November 18, 2021.

Ryan Majerus,
Deputy Assistant Secretary
for Policy and Negotiations,
Performing the Non-Exclusive Functions and Duties of the
Assistant Secretary for Enforcement and Compliance.

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